trial court, upon Lane's motion, had refused to quash the service of summons, and had ordered him to answer. Thereupon, he filed an answer, and then applied for a writ of prohibition. The Supreme Court held that the service of summons should have been quashed, and that the relator did not waive his objection to the irregularity of the process by filing his answer. This decision proceeds upon the ground that in filing his answer, Lane did not act voluntarily, but in response to the order of the court, and that, therefore, there could be no waiver. The court differentiates the case of State ex rel. Mackey v. District Court[6] from the principal case upon this ground. It is by no means clear, however, that the order of court in this case had any more compelling force than the possibility of the recovery of a default judgment would have in any civil suit.[7]

Although the rule announced by the principal case is followed in a large number of jurisdictions, including the United States Supreme Court, and is lauded as being a most reasonable one,[8] a number of states, including California, have adopted the contrary rule to the effect that a general appearance, after an unsuccessful attack upon the jurisdiction of the court, operates as a waiver of all irregularities in the process.[9] The reason underlying this rule is that where a defendant proceeds to contest the cause upon its merits, he should not be permitted to say that the court has jurisdiction to render a judgment favorable to him, but if the result is unfavorable, that the court has no jurisdiction to render a judgment against him. A further reason for this rule is found in the fact that objections to the jurisdiction of the court are of a technical and dilatory character, and should not be looked upon by the courts with favor.

J. D. R.

ATTORNEY AND CLIENT: RIGHT OF CLIENT TO COMPROMISE CLAIM WITHOUT CONSENT OF ATTORNEY.—Should the adverse party be protected in his dealings with an attorney substituted in an action upon the motion of the client, by an order regular upon

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[6] (1910), 40 Mont. 359, 106 Pac. 1098, 135 Am. St. Rep. 622.

[7] Where a defendant is brought into court under a warrant, his appearance is held not to be voluntary, and does not operate as a waiver of irregularity in the process. Warren v. Crane (1883), 50 Mich. 300, 15 N. W. 465.

[8] 2 R. C. L. 339; 3 Cyc. 525, 526. The theory of this rule is that the defendant, having done all that he could in objecting to the jurisdiction of the trial court, should not be compelled to submit to a judgment by default as a condition of having the jurisdiction of the trial court tested on appeal. Corbet v. Physicians' Casualty Ass'n (Wis., 1908), 16 L. R. A. (N. S.) 177, 178 n.

[9] In re Clarke (1899), 125 Cal. 388, 58 Pac. 22, overruling Deiderheimer v. Brown (1857), 8 Cal. 339, and Lyman v. Milton (1872), 44 Cal. 630; Corbett v. Physicians' Casualty Ass'n (1908), 135 Wis. 505, 512, 115 N. W. 365, 368, 16 L. R. A. (N. S.) 177; Dailey v. Kennedy (1887), 64 Mich. 208, 31 N. W. 125.

its face, if the attorney to be displaced has received no notice of the proceeding? Under the holding of the District Court of Appeal, in the case of *Gill v. Southern Pacific Company*,[1] the adverse party can only protect himself in such cases by inquiring of the displaced attorney whether notice has been given. In the principal case, the plaintiff had employed one Mr. Dormitzer to conduct an action for the recovery of damages for personal injuries. In order to effect a compromise of the claim, plaintiff secured an order of court substituting one Mr. Tormey as attorney in the action, and although the order of substitution was regular upon its face, no notice had been given to Mr. Dormitzer, who, after the action had been dismissed upon a stipulation signed by the plaintiff and Mr. Tormey, moved to set aside the order of dismissal. The trial court denied this motion, but on appeal, this ruling was reversed, upon the ground (1) that the code provision governing the substitution of attorneys had not been complied with; and (2) that a stipulation, signed by the client without the concurrence of the attorney of record, cannot be made the basis of a dismissal.

Section 284 of the Code of Civil Procedure gives the client the right to change his attorney at pleasure, and prescribes the mode in which the change shall be effected, namely, by an order of court, after notice to the attorney to be displaced.[2] In the opinion of the court, the legislative object in enacting this section was "to enable courts to conduct and dispose of causes in a due and orderly manner." It is apparent that to require concurrence of the court in the act of substitution will tend to preserve regularity in the conduct of suits, and to prevent the confusion which might ensue if a party were at liberty to change his attorney without the knowledge of the court. In the instant case, however, the order of court had been obtained, and it would seem that this is all that should be required to preserve the regularity of procedure in the conduct of the suit.

In setting aside the order of dismissal, the court treats the order of substitution as a nullity, because no notice had been given to Mr. Dormitzer. There is language in the case of Rundberg v. Belcher[3] to the effect that in cases of substitution of at-

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[1] (Dec. 10, 1915), 21 Cal. App. Dec. 821, 154 Pac. 478; opinion modified and rehearing denied Jan. 8, 1916. Rehearing granted by Supreme Court, Feb. 7, 1916.

[2] Gage v. Atwater (1902), 136 Cal. 170; Theilman v. Superior Court (1892), 95 Cal. 224, 30 Pac. 193; Woodbury v. Nevada So. Ry. Co. (1898), 121 Cal. 165, 53 Pac. 450.

In other jurisdictions it is the general rule that the court will refuse a substitution unless the attorney is paid for his services. Price v. Western Loan & Saving Co. (Utah, 1909), 19 Ann. Cas. 589, 593 n; Board of Commissioners v. Younger (Cal., 1865), 87 Am. Dec. 164, 169 n; Curtis v. Richards (1895), 4 Idaho, 343, 40 Pac. 57, 95 Am. St. Rep. 134.

torneys, notice must be given in the manner provided for by section 1005 of the Code of Civil Procedure. As to whether the giving of this notice is necessary to confer jurisdiction to make the order of substitution, the court in the Gill case ventures no opinion.[4]

Since under the holding of the court, Mr. Tormey had never become the attorney of record in the action, the order of dismissal was vacated. This decision proceeds upon the ground that the stipulation in this case amounted to an attempt by the client to control the course of the action in court, and though doubtless declaring the California rule,[5] is against the weight of authority in other jurisdictions.

It is a universal rule that a party may appear either by attorney or in person, but cannot do both; and if by attorney, then all matters pertaining to the conduct of the suit in court are under the exclusive control of the attorney. Hence a stipulation by a client extending the time for appearance is void.[6] The subject matter of the litigation, on the other hand, is according to the great weight of authority, under the exclusive control of the client to the extent of his interest therein.[7] A stipulation by the client for dismissal is one pertaining to the subject matter of the action, and not to the conduct of the case in court, and hence such a stipulation is, in the majority of jurisdictions, held to be valid.[8]

J. D. R.

COMMUNITY PROPERTY: RENTS, ISSUES AND PROFITS OF SEPARATE ESTATE.—Under the system of community of acquests and gains as it exists in the Spanish law, the community consists of all property acquired by "onerous" title during the continuance of the marriage, i. e., property acquired for a valuable consideration, while all property acquired by "lucrative" title, i. e., by gift, bequest, devise or descent, becomes the separate estate of the spouses.[1] A number of the states of this country which have been subjected to the influence of Spanish jurisprudence have adopted the community system with certain modifications, among which is the statutory declaration that the "rents, issues and profits" arising from the separate estate of the spouses shall be separate property.[2] Several of the states, however, have adopted the Spanish law with-

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[3] (1897), 118 Cal. 589, 50 Pac. 670.

[4] See Schultheis v. Nash (1909), 27 Wash. 250, 67 Pac. 707.

[5] Toy v. Haskell (1900), 128 Cal. 558, 60 Pac. 89; Boca etc. R. R. Co. v. Superior Court (1907), 150 Cal. 153.

[6] Wylie v. Sierra Gold Co. (1898), 120 Cal. 485, 58 Pac. 809; Mott v. Foster (1872), 45 Cal. 72.

[7] Cameron v. Boeger (Ill., 1902), 93 Am. St. Rep. 165, 170 n.

[8] Paulson v. Lyson (1903), 12 N. Dak. 354, 1 Ann. Cas. 245.

[1] Note to Cooke v. Bremod (Tex., 1864), 86 Am. Dec. 626, 629 n; The Spanish Community of Acquests and Gains and its Adoption and Modification by the State of California, 1 California Law Review, 33.

[2] Cal. Civ. Code, §§ 162, 163; Note to Re Pepper (Cal., 1910), 31 L. R. A. (N. S.) 1092 n.